

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411

BOSTON, MASSACHUSETTS 02108

(617) 727-8352

(800) 462-OCPF

MICHAEL J. SULLIVAN
DIRECTOR

September 12, 1995
AO-95-32

Ms. Lisa L. Mead
Committee to Elect Lisa Mead
P.O. Box 51
Newburyport, MA 01950

Re: Corporation's hosting of "informational breakfast"

Dear Ms. Mead:

This letter is in response to your August 25, 1995 request for an advisory opinion regarding the application of the campaign finance law to a corporate executive's hosting of an "informational breakfast" at the corporation.

You have stated that you are currently the Mayor of the City of Newburyport. You routinely host public meetings in public facilities to provide information to residents. In connection with your campaign for re-election, you would also like to attend an informational breakfast which would be hosted by the owner of a Newburyport corporation. The purpose of the breakfast is to provide a chance for members of an industrial park, where the corporation is located, to discuss various topics and issues of interest. The event is not intended to be a fundraiser, but rather "a question and answer-type session." The owner of the corporation would provide coffee, danish, and other refreshments. Your opponent will not be invited to the event.

You have provided a copy of a draft invitation which would be distributed by a vice-president of the corporation sponsoring the event. The letter states, in part, that the recipient is invited "to attend a morning coffee at our facility for the purpose of meeting with mayor Lisa Mead to explore the subject of our needs and concerns in the industrial park." The letter also states that "[t]he mayoral election will be coming up in November and I'm sure you will agree that the business environment is an important issue that affects each of us and our companies."

You have asked if the hosting of the event by the owner of the corporation at the corporation's facility, and the use of invitations reflecting the corporation's letterhead, would violate any part of M.G.L. c. 55, the Massachusetts campaign finance law.

For the reasons which follow, the corporation's vice president may host the breakfast if any costs incurred by the corporation are de minimus and incurred in the exercise of "ordinary hospitality." However, the corporation may not pay for the preparation and distribution of invitations or for any other service designed to promote the candidate. In addition, the corporation may not permit the use of its letterhead unless compensated for such use.

I. A Corporation May Exercise "Ordinary Hospitality."

Section 1 of chapter 55 defines "contribution" broadly to include any "contribution of anything of value . . . for the purpose of influencing the nomination or election of [an] individual or candidate . . . [including] a discount or rebate not available to other candidates for the same office and to the general public." Expenditures made in "the exercise of ordinary hospitality" are, however, excluded from the definition of "contribution."

"Ordinary hospitality" refers to "the common, average or unexceptional reception and/or entertainment of guests." See advisory opinion AO-93-17. Expenses made to provide "ordinary hospitality" are excluded from the definition of "contribution" since such expenses are not made primarily to promote a candidate. Rather, the expenses associated with providing the hospitality are made to make guests feel welcome and are similar to expenses which would be incurred to receive or entertain any guest.

The opinion concerned the exercise of ordinary hospitality by an individual rather than a corporation. We stated, however, that:

our conclusion is not intended to imply that each time a candidate is invited to visit a corporation, or other place of business, to meet with officers and/or employees of the corporation that the candidate or political committee must calculate and determine the value of such a meeting or visit and the refreshments provided. A corporation acting through its officers and/or employees does not make a contribution when merely extending "ordinary hospitality" nor is "ordinary hospitality" limited to the home.

Therefore, where a corporation extends "ordinary hospitality," it is not acting in a manner which is inconsistent with Section 8 of M.G.L. c. 55.

As we noted in AO-93-17, "the purpose of the exception stems primarily from practical considerations . . . the provision of ordinary hospitality is the level of hospitality that one would offer any stranger or guest being welcomed to one's home, or business, in order to make that person feel welcome. . . ." (emphasis added).

A corporate host, like an individual host, may generally provide coffee and donuts, or wine, cheese and crackers, as well as a place to meet, for a meeting or reception at which a candidate appears. However, given the legislative purpose underlying section 8, the limitation of corporate influence on the election of candidates, this office would closely review corporate expenditures. This office would look to both the nature and extent of an expenditure. To be "ordinary," such expenditures must be de minimus in connection with the exercise of ordinary hospitality.¹

To determine whether an expenditure exceeds "ordinary," the totality of the circumstances must be reviewed on a case-by-case basis. For example, if a corporation would provide wine, cheese and crackers for 1,000 stockholders meeting a candidate, we would conclude that the expenditure would not be de minimus. On the other hand, where, as in your example, refreshments would be provided to a much smaller number of persons, perhaps 25, the expenditure would be seen as de minimus. This office would look to various factors, including the cost of the refreshments and facilities, to determine whether a corporate expenditure is de minimus.

II. A Corporation May Not Provide Services Exceeding "Ordinary Hospitality."

Although a corporation may provide "ordinary hospitality," it may not provide services to a candidate if such services are different in kind, or exceed the scope of, "ordinary hospitality." Section 1 of chapter 55 excludes "the rendering of services by speakers, editors, writers, poll watchers, poll checkers or others, [and] the payment by those rendering such services of such personal expenses as may be incidental thereto" from the definition of "contribution." The "personal expenses" referred to in section 1, however, are expenditures by individuals, not corporations. Corporations, unlike individuals, are prohibited by section 8 from providing candidates with services exceeding "ordinary hospitality," i.e., services which directly or indirectly are designed to promote a candidate's nomination or election, such as the preparation and mailing of invitations.

Since the mailing of invitations is not an element of "ordinary hospitality," the corporation may not produce or mail invitations to the event. In addition, the corporate letterhead is something of value which if given by the corporation would be an in-kind "contribution." Therefore, absent compensation from the candidate, the candidate's political committee, or from an individual supporter, a corporation may not use its letterhead on invitations even if

¹ Even if expenditures to provide "ordinary hospitality" may be made by a corporation, they may also be paid for by a candidate, political committee, or individual supporter of a candidate.


privately reproduced. See Opinion of the Attorney General, November 6, 1980. Because it may be difficult to determine the fair market value of the use of corporate letterhead, this office would advise against such use.

Finally, you should note that in addition to a corporation extending "ordinary hospitality," corporate officers or employees may make personal expenditures, not from corporate funds, to enhance your candidacy. Corporate officers or employees may personally pay for the production, reproduction and distribution of invitations in connection with the event, if the total amount provided by any individual, together with contributions from the individual, does not exceed the \$500 annual limit established by M.G.L. c. 55, s. 7A.² Secretarial or other staff time paid for by the corporation may not be used to produce and distribute the invitations. To the extent corporate personnel are used, the corporation must be reimbursed for such work by calculating the amount of time spent on the task and the hourly wage paid for such time.

Corporate officers may not require any employee to make a contribution or "render any political service on account of, or as a consequence of, his employment, and such person shall not be removed or otherwise prejudiced for refusing to do so." For example, a secretary cannot be required to type invitations. See M.G.L. c. 55, s. 16B. Similarly, employees cannot be required to attend the event.

This opinion is solely in the context of M.G.L. c. 55, only applies in the context of elections for state and local office, and is based solely on the representations made in your letter. Should you have additional questions, please do not hesitate to contact this office.

Sincerely,



Bradley S. Balzer
Deputy Director

BSB/cp

² Corporate officers or employees may also prepare invitations as a "personal service" on their own time or consistent with a corporate policy regarding the performance of personal tasks while being compensated. See Opinion of the Attorney General, November 6, 1980 and AO-93-32.